

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1498 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BALKISHAN @BALUKRUSHNA @ BALIYO KANAIYALAL KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 5th January, 1999 made by the Commissioner of Police, Vadodara City, under the powers

conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of public order. As many as three offences punishable under the Bombay Prohibition Act have been registered against the petitioner, two of them are pending trial. In each of the said cases, a substantial quantity of country liquor was recovered from the possession of the petitioner. Besides, three individuals, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the public order.

4. Amongst other grounds, it is contended that alongwith the grounds of detention, the petitioner has not been supplied the reports of the chemical examination in respect of any of the cases registered against him. The petitioner, therefore, under his representation dated 24th February, 1999, made through the learned advocate, had requested for supply of such reports. In spite of the said request, the reports of the chemical examination are not supplied to the petitioner. The petitioner is thereby deprived of his right of making an effective representation. The constitutional right of the petitioner having thus been infringed, the continued detention of the petitioner is vitiated.

5. The averment made is not controverted, nor is it the case of the detaining authority that on the date of the order, such reports were not available. It cannot be gainsaid that the reports of the chemical examination of the liquor allegedly seized from the possession of the petitioner are vital documents and ought to have been considered by the detaining authority while recording his subjective satisfaction, and a copy thereof ought to have been furnished to the petitioner alongwith the grounds of detention. This having not been done, the satisfaction recorded by the detaining authority is vitiated and so also the order of detention. The continued detention of the petitioner is, therefore, illegal and void.

6. For the aforesaid reasons, this petition is allowed. The order dated 5th January, 1999, Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*